

Applicant elects the invention of Group 1 (Claims 1, 3-16, 29-48, insofar as the claims are drawn to a method for preventing cancer in mammal, wherein said method comprises administering to said mammal one or more GBS toxin receptors or immunogenic fragments thereof, and a composition comprising said receptor or fragments, classified in class 424, subclass 277.1) with traverse.

Applicant respectfully submits that the restriction requirement is erroneous and should be withdrawn. The Examiner supports the restriction requirement by alleging that the inventions in groups 1-60¹ are disclosed as different methods that differ at least in objective, method steps, reagents and/or doses and/or schedules used, response variables, assays for end products and/or results, and criteria for success and that the claimed methods are distinct. However, according to MPEP § 803 the examiner must examine an entire application on the merits, including claims to distinct or independent inventions, so long as the search and examination of the entire applications can be made without serious burden.

Applicant respectfully submits that examination of the claims of the entire application will not impose an undue burden. With respect to the restriction between the groups, Applicant respectfully submits that the Examiner has failed to establish any undue burden placed upon the PTO by the presence of all of the groups in the same application. Many of the groups delineated by the Examiner fall within the

¹ The Office Action included two groups of claims numbered 26 and two groups of claims numbered 27, for a total of 62 groups of claims.

same classification. Thus, the field of search for these groups is the same, and there is no reason for insisting upon restriction. See MPEP § 808.02.

Election of Species

Upon election of the Group 1 claims, the Examiner has further required an election of species specifically identifying the components of the composition that is to be administered to the mammal for prosecution on the merits.

Applicant elects the species of invention wherein a composition is administered comprising at least one immunogenic fragment having substantial identity to Hab3.

Applicant elects the species of invention wherein the composition is administered to a mammal via subcutaneous injection.

Applicant elects the species of invention wherein the composition comprises at least one immunogenic fragment having substantial identity to Hab3.

Applicant elects the species of invention wherein the adjuvant is Freund's adjuvant.

Applicant elects the species of invention wherein the protein carrier is keyhole limpet hemocyanin.

Applicant elects the species of invention wherein the composition to be produced comprises at least one immunogenic fragment having substantial identity to Hab3.

Applicant makes these elections with traverse to the extent that the Examiner intends to follow a procedure differing from that explained in MPEP § 803.02, which

provides for full examination of a generic claim with respect to the elected species as well as to the extent necessary to determine patentability of the generic claim itself. Applicant respectfully submits that MPEP § 803.02 provides the appropriate and required procedure for examination in this situation.

Furthermore, Applicant respectfully submits that the species election requirements with respect to the Markush claims are erroneous and should be withdrawn. MPEP § 803.02 states that the Examiner should not require election of species where the members of a Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the Examiner must examine all the members of the Markush group in the claim on the merits. The members of Applicant's Markush claims are few in number and can be searched and examined without serious burden. Thus, the Examiner should examine all the members of Applicant's Markush group.

Applicant earnestly solicits an early and favorable action on the merits.

Respectfully submitted,

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